

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

NELSON L. BRUCE,

Plaintiff,

v.

PENTAGON FEDERAL CREDIT UNION
a.k.a. PENTAGON FEDERAL CREDIT
UNION FOUNDATION (“collectively”
PENFED), EXPERIAN INFORMATION
SOLUTIONS, INC., TRANS UNION, LLC,
EQUIFAX INFORMATION SERVICES,
LLC, all unknown Does 1-100, et al.,

Defendants.

Case No. 2:22-cv-02211-BHH-MGB

**DEFENDANT EQUIFAX INFORMATION
SERVICES LLC’S RESPONSE IN
OPPOSITION TO PLAINTIFF’S
MOTION TO STRIKE EQUIFAX’S
REPLY TO PLAINTIFF’S OBJECTIONS
TO THE MAGISTRATE’S REPORT AND
RECOMMENDATION**

Defendant Equifax Information Services LLC (“Equifax”), by Counsel, hereby submits its Response in Opposition to Plaintiff’s Motion (Doc. 151) to Strike Equifax’s Reply (Doc. 148) to Plaintiff’s Objections (Doc. 137) to the Magistrate’s Report and Recommendation (Doc. 131) and shows the Court as follows:

INTRODUCTION

Plaintiff, a serial *pro se* litigant in this District, filed his Complaint on July 12, 2022. (Doc. 1.) He filed an Amended Complaint on November 2, 2022, (Doc. 31), and second Amended Complaint on May 25, 2023, (Doc. 98). On June 5, 2023, Equifax filed a Motion for Judgment on the Pleadings pursuant to Fed. R. Civ. P. 12(c). Plaintiff filed his Response in Opposition to Equifax’s Motion on July 10, 2023. (Doc. 114.) On September 25, 2023, the Magistrate Judge issued a Report and Recommendation, recommending that Equifax’s Motion be denied. (Doc. 131.) On October 6, 2023, Equifax filed its partial Objections to the Magistrate’s R&R. (Doc. 134.) On October 10, 2023, Plaintiff filed his Objections. (Doc. 137.) The Objections were entered on the

Court's docket on October 11, 2023. (*Id.*) Due to an error in calendaring, Equifax calculated its response deadline from the date of entry rather than the date of filing, and filed its Reply to Plaintiff's Objections on October 25, 2023 (Doc. 148), that is, 14 days after Plaintiff's Objections were *entered* on the Court's docket, rather than 14 days after Plaintiff's Objections were *filed* with the Court. Plaintiff now moves to strike Equifax's Reply. As set forth herein, Equifax responds to Plaintiff's Motion.

ARGUMENT

I. Plaintiff Has Demonstrated No Prejudice To Equifax's Reply Being Filed One Day Late Due To An Error In Calendaring

In his Motion, Plaintiff makes no argument that he was prejudiced, in any way, by Equifax's Reply to Plaintiff's Objections being filed on October 25, 2023, 14 days after Plaintiff's Objections were entered on the Court's docket, rather than on October 24, 2023, 14 days after Plaintiff's Objections were filed with the Court. Nor could he, as he had no right to file any response to Equifax's Reply. Equifax's Reply was filed on October 25, 2023 due to an error in calendaring, but Equifax did not unduly dither or tarry in filing its Reply and provided it to the Court with ample time for the Court's consideration.

Equifax respectfully requests the Court deny Plaintiff's Motion and consider Equifax's Reply. Indeed, courts may consider actual objections—let alone a reply—when they are not egregiously late. *See, e.g., Holbrook v. Ballard*, No. 12-cv-953, 2013 WL 646034, at *1 (S.D. W. Va. Feb. 21, 2013) (“[A]lthough the objections . . . were late by one day, I will still consider them.”); *Morris v. Haynes*, No. 05-cv-193, 2008 WL 4283321, at *2 (N.D. W. Va. Sept. 17, 2008) (“[T]his Court finds that the late filing of objections was not egregious, and that the defendants have not been unfairly prejudiced by the delay[.]”).

Here, Equifax's initial Objections were timely filed and Plaintiff does not contend otherwise. Only Equifax's Reply to Plaintiff's Objections was one day late. Accordingly, Equifax respectfully requests the Court deny Plaintiff's Motion and consider Equifax's Reply.

DATED: November 9, 2023

Respectfully submitted,

By: /s/ Rita Bolt Barker

Rita Bolt Barker (Fed. ID No. 10566)

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2023, I presented the foregoing RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record. A copy has also been sent via U.S. Mail to the following:

Nelson L. Bruce (*plaintiff pro se*)
c/o P.O. Box 3345
Summerville, South Carolina 29484

/s/ Rita Bolt Barker
Rita Bolt Barker
Counsel for Defendant
Equifax Information Services LLC